

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANCISCO GARCIA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 9307. March 19, 1914

Ponente: TRENT, J.

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TRENT, J.:

An appeal from a judgment of the Court of First Instance condemning the appellants, Francisco Garcia and Ursula Buan, the first to one year eight months and twenty-one days of prision correccional, and the second to two years four months and one day of destierro, and each to pay one-half the costs of the cause, for the crime of concubinage.

The testimony of record shows that the appellant Francisco Garcia abandoned his lawful wife, Benita Dizon, and took unto himself the other appellant as his concubine. The two appellants for a long time prior to the institution of this action were living together openly, publicly, and scandalously as man and wife. As a result of this union Buan gave birth to a child.

Benita Dizon filed in the justice of the peace court on December 23, 1911, a formal complaint, which was sworn to, against these two appellants charging them with having violated the provisions of article 437 of the Penal Code. A preliminary investigation was held, and the justice of the peace, finding that a crime had been committed and that there was probable cause to believe that these appellants had committed the crime, issued an order directing them to appear before the Court of First Instance to answer this charge. The provincial fiscal upon the record, which included the complaint filed by Dizon, prepared and presented to the court an information charging the appellants with the same offense. It is now insisted that the trial court did not acquire jurisdiction of the persons of the appellants and the subject matter of the action, because the information was signed by the fiscal and not by the offended party. We think this objection not well-founded for the reason that this criminal action or prosecution was instituted by the aggrieved person, Benita Dizon, when she filed her complaint in the court of the justice of the peace. The prosecution having been thus instituted whereby the courts acquired jurisdiction of both the persons and the subject matter of the action, the fiscal was authorized to file his information and make it the basis upon which the proceedings in the Court of First Instance might be continued to a final determination.

For the foregoing reasons the judgment appealed from is affirmed, with costs against the appellants.

Arellano, C. J., Carson, Moreland, and Araullo, JJ., concur.

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